

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

v.

Criminal Case No. 12-20218

Michael Anthony Green,

Sean F. Cox

United States District Court Judge

Defendant.

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OPINION & ORDER
DENYING DEFENDANT’S MOTION FOR COMPASSIONATE RELEASE

In this criminal action, Defendant Michael Anthony Green (“Defendant”) was convicted of multiple robbery and firearms offenses and was sentenced to a total of 471 months’ imprisonment. The matter is before the Court on Defendant’s Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A), which is based upon concerns about the ongoing novel coronavirus pandemic (“COVID-19”) and family circumstances. The Court concludes that a hearing is not warranted and orders that the motion will be decided based upon the briefs. As explained below, the Court shall DENY the motion because: 1) Defendant poses a danger to the community and thus his release would not be consistent with applicable policy statements issued by the Sentencing Commission; and 2) because the 18 U.S.C. § 3553(a) sentencing factors do not favor his release.

BACKGROUND

In this criminal case, Defendant was convicted of multiple robbery and firearms offenses and was sentenced to a total term of 471 months’ imprisonment. He has eleven years of his sentence remaining.

Defendant is 37 years old. It is undisputed that Defendant has asthma, for which he is prescribed an Albuterol inhaler.

Defendant filed his Motion for Compassionate Release on August 10, 2020. He seeks release based upon concerns about COVID-19 and because he would like to help his wife care for her mother. The Government acknowledges that Defendant exhausted his administrative remedies but opposes the motion on the merits.

ANALYSIS

Defendant's Motion for Compassionate Release is brought under 18 U.S.C. §3582(c)(1)(A) and asks this Court to allow him to serve the remainder of his sentence in home confinement.

Under 18 U.S.C. § 3582(c)(1)(A), the Court may reduce an imposed sentence if it determines that "extraordinary and compelling reasons warrant such a reduction." On top of making this finding, the Court must also consider the sentencing factors described in 18 U.S.C. § 3553(a) and decide if a sentence reduction would be "consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).

U.S. Sentencing Guidelines Manual § 1B1.13 (U.S. Sentencing Comm'n 2018) is the "applicable policy statement" with which the Court must comply when considering Defendant's request for compassionate release. 18 U.S.C. § 3582(c)(1)(A). Section 1B1.13 explains that a defendant must "not [be] a danger to the safety of any other person or to the community" under 18 U.S.C. § 3142(g) **and** must fit within at least one of four categories of "extraordinary and compelling reasons." Those categories are: "Medical Condition of the Defendant," "Age of the Defendant," "Family Circumstances," and "Other Reasons."

In sum, a defendant seeking compassionate release must present extraordinary and compelling circumstances, must have § 3553(a)'s sentencing factors weigh in his favor, must not be a threat to others as determined by § 3142(g), and must fit within one of the four categories in § 1B.13 of the Sentencing Guidelines.” *United States v. Shah*, 2020 WL 1934930 at *1 (E.D. Mich. April 22, 2020) (citations omitted). *United States v. Murphy*, 2020 WL 2507619 at *3-4 (E.D. Mich. May 15, 2020).

Here, it is undisputed that Defendant has asthma, for which he is prescribed an Albuterol inhaler. But even if Defendant could satisfy the first eligibility threshold for compassionate release during this pandemic, the Government persuasively argues that Defendant is ineligible for compassionate release because he is a danger to the community.

Section 1B1.13(2) permits release only if a “defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” The record does not support such a finding in this case, where Defendant was convicted of multiple robbery and firearms offenses.

The § 3553(a) factors, including Defendant’s history and characteristics, seriousness of the offense, promoting respect for the law, and providing just punishment also weigh against Defendant’s request for compassionate release. Defendant’s criminal conduct was serious, as he was convicted of multiple robbery and firearms offenses. Defendant also has an extensive criminal history prior to the instant offenses. Allowing Defendant to be released after serving a fraction of his sentence would not promote respect for the law or proper deterrence, provide just punishment, and avoid unwanted sentencing disparities. This Court concludes that Defendant is not an appropriate candidate for the extraordinary remedy of compassionate release.

CONCLUSION & ORDER

For the reasons set forth above, **IT IS ORDERED** that Defendant's Motion for Compassionate Release is **DENIED**.

IT IS SO ORDERED.

s/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: October 7, 2020